IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 21378 of 2007(T)

CC.813/2004 of J.M.F.C.-I, CHENGANNUR

.....

PETITIONER:

HARILAL, KAVANAMTHOTTATHIL HOUSE
SILPASALA ROAD, THAIKUDAM,
VYTTILA P.O., KOZHI.

BY ADV. SRI.IYPE JOSEPH

RESPONDENTS:

---

1. DELIGHT J. VATTIKKADAN, VETTIKKATTU
   DIAGNOSTIC CENTRE,
   GOVT. HOSPITAL JUNCTION, CHENGANNUR.

2. STATE OF KERALA, REP. BY PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.V.MANOJ KUMAR
R2 BY PUBLIC PROECUTOR SRI. M.S. BREEZ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/07/2007, THIS COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

- -

W.P.C.No. 21378 of 2007 T

- -

Dated this the 10th day of July, 2007

JUDGMENT

The petitioner is the accused in a prosecution under Section 138 of the N.I. Act. The first respondent is the complainant. The learned Magistrate has found the petitioner guilty and has convicted and sentenced him to undergo S.I. for a period of three months and to pay an amount of Rs.2,60,000/- to the complainant as compensation and in default to undergo S.I. for a period of two months. The petitioner has not challenged the verdict of guilty, conviction and sentence so far. The time prescribed for preferring the appeal is already over.

2. The petitioner submits that he has subsequently settled the dispute with the complainant. He therefore wants the verdict of guilty, conviction and sentence to be set aside invoking the powers under Section 482 Cr.P.C. The counsel relies on the decision in **Sabu George** V. **Home Secretary** (2007 (1) KLT 982) in support of his contention that such quashing of proceedings is possible even after the decision has become final. The petitioner has certainly a remedy

of preferring an appeal against the verdict of guilty, conviction and sentence. Of course, the time prescribed under law for preferring the appeal is already over. But the Appellate Court is certainly legally competent to condone the delay and entertain the appeal.

3. According to the petitioner, there is a change in circumstance and that is what obliges him to come to court now. That change in circumstance can certainly be urged as a reason to explain the delay and a prayer can be made to condone the delay in filing the appeal. I find no reason why the appellate court informed of the subsequent settlement of a compoundable offence like the one under Section 138 of the N.I. Act should not choose to invoke its powers to condone the delay and entertain the appeal and accept the composition.

4. The decision in **Sabu George** cannot be reckoned as authority for the proposition that all composition hereafter can be accepted by the High Court by invoking the powers under Section 482 Cr.P.C. That was an exceptional case where the parties had no other remedy in the State to avoid the verdict of guilty, conviction and sentence, which verdict would have compelled the accused to undergo incarceration in prison. In an exceptional case in aid of justice such power can be invoked to accept a post-revision

composition of the offence committed. That and that alone is laid down in **Sabu George.** I am of the opinion that the attempt to invoke the dictum in **Sabu** and avoid the burden to prefer an appeal is totally misconceived. The request cannot be accepted.

5. This Writ Petition is accordingly dismissed. I may hasten to repeat that the dismissal of this writ petition will not in any way fetter the rights of the petitioner to move the appellate court along with an application for condonation of delay in filing the appeal and to report composition of the offence under Section 138 of the N.I. Act.

(R. BASANT)
Judge

tm